

Permit Process for New and Modified Refineries

Summary of 19 State Responses to February 16, 2006, Letter to State and Local Air Pollution Agencies

June 1, 2006

This summarizes results from 19 States responding to a survey of State and local air pollution agencies. The responses provide additional evidence that the environmental permitting process is not preventing new refineries from being built or existing refineries from being expanded.

Background

On February 16, 2006, Representative Dingell, Ranking Member of the Energy and Commerce Committee, requested information from State and local air pollution agencies regarding the processing of new source review (NSR) air permits for new refineries and for expansions at existing facilities. In that letter, Rep. Dingell explained the need for this information:

Hurricane Katrina focused the Nation's attention on refining capacity in the United States and its relationship to high gas prices. Some have alleged that delays in obtaining environmental permits, especially new source review, are to blame for the oil companies' decisions not to build new refineries or further expand existing refineries. Previous Congressional testimony from then U.S. Environmental Protection Agency (EPA) Administrator Carol Browner regarding permit process times, however, does not support that allegation. In response to recent requests, EPA has refused to update the information previously provided by Ms. Browner; instead it has responded that States are charged with processing new permits.

Rep. Dingell went on to note,

Ideally this information would have been collected before the United States House of Representatives, by a very slim majority, passed H.R. 3893, the "Gasoline for America's Security Act of 2005" on October 7, 2005. Unfortunately, the normal legislative process of fact-finding and then legislating was not followed.

Since Rep. Dingell's request to the State and local permitting authorities, a second refinery permitting bill, H.R. 5254, was introduced and then failed passage in the House under suspension of the rules on May 3, 2006, by a vote of 237-188 (two-thirds not having voted in favor). No hearings have been held on refinery permitting since Rep. Dingell sent his request to the permitting authorities.

Although States and local agencies issue other types of permits for refineries, data was collected on the NSR air permit process because it is the one most frequently identified as a concern by industry.

Agencies Responding

The survey was distributed to State and local air pollution agencies through the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). State and local agencies in 19 States responded. They are responsible for permitting nearly 60 refineries (over one-third of the refineries in the United States).¹ The three States with the largest number of refineries (California, Texas, and Louisiana), which together contain more than a third of the country's refineries, have not responded to this survey.

Information on New Refineries

None of the State and local agencies responding to this request had received a major air permit application for a new refinery in the last 10 years.

This is consistent with previous information from EPA. EPA previously said that they were aware of only one proposed major refinery seeking an air permit in the last 25 years.² According to information from the Arizona Department of Environmental Quality, two air permits have been issued for this proposed facility. The State issued the initial air permit in 1992,³ but the applicant let it lapse when financing could not be obtained. The State issued a new air permit in April 2005, nine months after a complete application was filed for the refinery at a new location in Yuma, Arizona.⁴

Information on Changes to Existing Refineries

Of the 19 States for which we received responses, the State and local agencies in 11 States reported receiving approximately 30 major NSR permits for modifications to existing refineries in the last 10 years. On average, this is equivalent to about one permit application for a major modification for every two refineries in these jurisdictions. Although these States regularly processed permit applications for major modifications to existing refineries, on average it was not a frequent occurrence for any specific refinery. Once the agencies had complete applications, the agencies reported taking

¹ Attached as Appendix A is the list of State and local agencies that reported having refineries in their jurisdiction. Other agencies also responded, confirming that they did not have refineries in their jurisdiction. Responses were not received from Texas, California (except for local air districts that did not have a refinery), and Louisiana. These three States account for over a third of the refineries in the United States.

² Letter from William Wehrum, Acting Assistant Administrator, U.S. Environmental Protection Agency, to the Honorable Henry A. Waxman (October 27, 2005).

³ Letter from Nancy Wrona, Arizona Department of Environmental Quality to Jeff Donofrio, Committee on Energy and Commerce Democratic staff (July 29, 2004).

⁴ Air Quality Class I Permit issued by Arizona Department of Environmental Quality to Arizona Clean Fuels Yuma, LLC on April 14, 2005.

from one and a half months to a year to take final action on the permits. The majority of the reported permit actions (17 of 25 actions for which processing times were provided) were completed within six months of receipt of a complete application.

This is consistent with then-EPA Administrator Browner's testimony in 2000 that approximately half the major permit modifications for refineries were issued within five months and that most others were issued within 12 months.⁵

State and local agencies responding to the survey reported a total of only three pending major air permit applications. For two of the permit applications, the State reported that it expected final action within a year of receipt of the initial applications even though the State had not yet determined whether the applications were complete. The other permit application has been pending since the end of April. The State sent an initial letter approving the project; final approval is awaiting additional information from the permit applicant.

In addition to major modifications at existing facilities, some agencies reported the number of refinery expansions that were not major modifications. These expansions were subject to the State minor NSR program, rather than the Federal major NSR program. A State minor NSR program is subject to less Federal oversight. Generally, minor NSR permits can be processed as fast or faster than major NSR permits. Although not all States that responded to the survey provided the number of refinery expansions that underwent minor NSR, for the last 10 years States reported three or four times as many expansions having gone through the minor NSR program as the number of modifications that went through the major NSR program.

Last fall, EPA wrote that it did not have updated information on permit process times for modifications at existing facilities.⁶ The State and local agencies reported, however, processing times for modifications at existing facilities that are somewhat shorter than the EPA estimate of 12-18 months processing time for permit modifications at other types of large facilities.

⁵ Hearings Before the Committee on Government Reform, House of Representatives, "Potential Energy Crisis in the Winter of 2000" (September 20-21, 2000) No. 106-251 at p. 277.

⁶ Letter from William Wehrum, Acting Assistant Administrator, U.S. Environmental Protection Agency, to the Honorable Henry A. Waxman (October 27, 2005).

Appendix A

Agencies with Refinery Permitting Responsibility that Responded to February 16, 2006, Letter

Alabama Department of Environmental Management

Arkansas Department of Environmental Quality

Delaware Department of Natural Resources and Environmental Control, Air Quality Management Section

Hawaii Department of Health, Clean Air Branch

Illinois Environmental Protection Agency, Bureau of Air

Indiana Department of Environmental Management

Kansas Department of Health and Environment, Bureau of Air and Radiation

Michigan Department of Environmental Quality, Air Quality Division

Minnesota Pollution Control Agency

Mississippi Department of Environmental Quality

Montana Department of Environmental Quality, Air Resources Management Bureau

New Jersey Department of Environmental Protection

New Mexico Department of Environment

Ohio Environmental Protection Agency

Oklahoma Department of Environmental Quality

Utah Department of Environment and Natural Resources

Virginia Department of Environmental Quality

Washington Department of Ecology/ Northwest Clean Air Agency/ Puget Sound Clean Air Agency

Wisconsin Department of Environment and Natural Resources